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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1059

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

CHESTER RAILING AND PAUL RAILING,
d/b/a C & P COAL COMPANY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITIONER'S REPLY TO RESPONDENTS' OBJECTION TO THE PETITION FOR WRIT OF CERTIORARI

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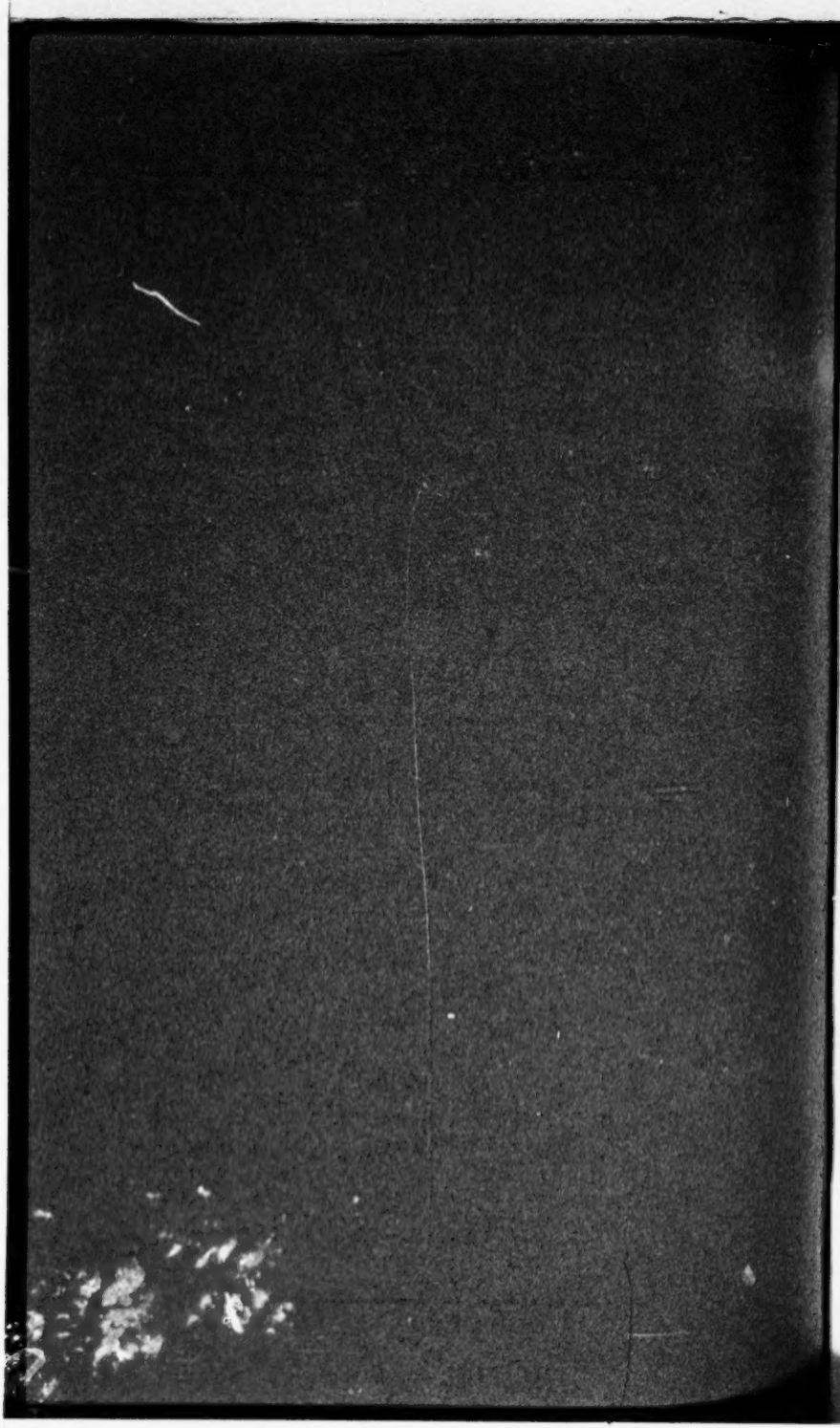

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PETITIONER'S REPLY TO RESPONDENTS' OBJECTION TO THE PETITION FOR WRIT OF CERTIORARI

Railing's[1] objections to the Writ sought by UMW in ıe instant case are (a) the instant case must be re-ıanded and that, on remand, Railing's motion to amend ɔ assert an antitrust claim should be allowed, thereby ıaking the statute of limitations question unimportant, ıd (b) the Fourth Circuit's ruling was sound and does ɔt conflict with any prior decision. UMW responds ıereto *seriatim:*

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[1]The same abbreviations are employed herein as were used in otnotes 1 and 2 of the instant Petition for Writ of Certiorari. In dition, the abbreviation "Op. Br. ....." refers to Railing's Objection the Petition for Writ of Certiorari.

A. RAILING'S OBJECTION TO THE INSTANT WRIT OF CERTIORARI BASED UPON THEIR DESIRE TO AMEND THE COMPLAINT HEREIN MUST BE REJECTED BY THIS COURT.

1. Railing Would Deprive UMW of the Right of Review to Test the Validity of the Fourth Circuit's Judgment.

Both the district court and the Fourth Circuit regarded the judgment under review as a "final judgment".[2] Railing ignores this fact in their statement (Op. Br. 10) that "This Appeal Covers Only a Part of the Case". Moreover, the Fourth Circuit's remand was "for further proceedings not inconsistent with this opinion",[3] which dealt *exclusively* with the statute of limitations issue under Section 303, Labor Management Relations Act of 1947.

2. Railing Erroneously Claims Their Antitrust Amendment Would Make the Limitations Question Unimportant.

Railing erroneously argues that "on the Remand the Motion to Amend To Assert an Antitrust Claim Should Be Allowed and This Would Make the Statute of Limitations Question Unimportant" (Op. Br. 10).

In the instant certiorari petition (pp. 21-22), UMW assigns as one reason for this Court's granting the Writ that the Fourth Circuit's result requires the district court upon remand to apply two different interpretations of the same limitation statute. Railing ignores that in their application to the Fourth Circuit for permission to amend the complaint, they admitted this "would possibly raise a plethora of statute of limitations problems at the trial" and could conceivably wipe out much of the benefit Railing "might have from the common law conspiracy claim under the principle of pendent juris-

[2]See Petition, Appendix A, p. 26a; Appendix B, p. 34a.

[3]See Petition, Appendix B, p. 40a.

tion".[4] Railing ignores, too, that their Fourth Cir- t application expressly asserted that the proposed endment sought by them *"would replace the com- n law conspiracy claim in the complaint with a Sher- n Act conspiracy claim"*. Railing did not suggest proposed amendment would supplant the complaint's eged secondary activity.

Thus, it is evident that the Fourth Circuit's ruling ncerning the appropriate limitations rule involved in ection 303 action remains an important one for review this Court. It is equally manifest that Railing's con- tion that the proposed amendment would render important the limitations issue is totally erroneous.

3. Under Applicable Law, the Proposed Amendment is Improper.

Railing sought permission to amend the instant com- int for the first time in the Fourth Circuit after Rail- had perfected and pursued their appeal from the trict court's judgment, the Fourth Circuit had ren- ed its opinion and judgment adverse to UMW, and MW had filed its petition for rehearing *en banc*. The urth Circuit properly rejected Railing's attempt to end, consistent with its holding in *Tahir Erk* v. *Glen Martin Co.*, 116 F.2d 865, 871, that ". . . we think better practice to permit it to be made before the trict Court in connection with further proceedings to had upon the remand."

Railing's application was not filed until August, 1970. July 14, 1959, all strike activity had ceased. Thus, n assuming the validity of the Fourth Circuit's ruling the limitations issue (which UMW denies), more than

[4] See Railing's Objection to the Petition for Certiorari, Appendix p. 2a.

11 years had elapsed between the cessation and service of the proposed amendment, more than 9 years since the 2-year limitation expired, and more than 7 years since the 4-year period under the federal antitrust limitations period.

Moreover, contrary to Railing's assertion that there is no sound reason for the district court to disallow the amendment, Rule 15(c), Federal Rules of Civil Procedure restricts the application of the doctrine of relating back to the date of the original pleading to situations where "the claim or defense asserted in the amended pleading *arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading*". Moore's Federal Practice, Second Edition, Volume 3, p. 1026, recognizes "it is still the rule that an amendment which states an entirely new claim for relief *based on different facts will not relate back*". Similarly, Barron & Holtzoff (Wright Ed.), Federal Practice and Procedure, Volume 1A, section 448 recites:

> "If the evidence tending to support the facts alleged in the amended complaint could have been introduced under the former pleading, the amendment is not objectionable"

and

> "The fundamental question is whether the defendant has been put on notice with regard to the claim against him raised by the amended pleading."

Notably, Railing conceded (Op. Br., Appendix A, p. 2a) that the claim for alleged conspiratorial and coercive activities of UMW related to the *"state created claim"*. Both the district court and the *dissenting opinion* took note that the "non-peaceful, violent, coercive, and con-

piratorial activities" arose from a "common-law tort".[5] Clearly, nothing in the complaint's allegations related o any alleged federal antitrust violation and hence Rail- ng could not claim that UMW had been put on notice vith regard to the antitrust claim now posed by the roposed amended pleading, as the rule expressed above rom Barron & Holtzoff's text requires. Again, the rule xpressed by Moore's Federal Practice, Volume 3, p. 026 that "it is still the rule that an amendment which tates an entirely new claim for relief *based on different acts will not relate back*" would not warrant the ad- nission of facts pertaining to the federal antitrust claim.

Moreover, Railing's suggested evidence as support or the attempted amendment (Op. Br. 4-9) not only iscloses nothing of a conspiratorial nature but Railing's haracterization thereof as "new facts" is grossly er- oneous since they were available at all times since 1958 s to the Protective Wage Clause (PWC) of the National greement of 1958 and since 1964 with reference to the 0-cent clause—long prior to the district court's 1967 uling (Pet. App. A, p.1a).

UMW has herein demonstrated (*ante*, pp. 2-3) that he Fourth Circuit's judgment on the limitations issue nder the Act's Section 303 remains of vital concern o UMW; and since Railing admits their intention is *to make this motion in the District Court when the ase is remanded*" (Op. Br. 10), UMW deems discussion f cases cited by Railing (Op. Br. 5-9, 11) and UMW's hallenge of Railing's erroneous description of the evi- ence would appear immaterial, irrelevant and burden- me to this Court, when the crucial question for review the Fourth Circuit's holding on the issue of the statute

[5]Petition for Certiorari, Appendix B, p. 41a.

of limitations as presented in the instant certiorari petition.

B. RAILING'S OBJECTIONS TO THE ISSUANCE OF THE WRIT HEREIN TOTALLY IGNORE UMW'S REASONS FOR THE WRIT'S ISSUANCE.

Railing's claim (Op. Br. 11-13) that the Fourth Circuit's ruling was sound on the limitations issue and not in conflict with any prior decision is no more than an assertion of counsel, since Railing failed to respond to UMW's assigned reasons for granting the Writ herein (Pet. 14-23), which abundantly demonstrates the need for the Writ's award.

In addition, Railing admits [R. 19(73)] that employees wanted him to sign a standard UMW contract. Thus, primary picketing was implicit in the case. As recognized in *Teamsters, Local 20* v. *Morton*, 377 U.S. 252, 261-62, lawful primary activities could not serve as a predicate for damages; and since there is an admitted admixture of both *lawful primary activity* and alleged barred secondary activity under the Act's Section 303, such fact invites affirmance of the district court's rule and view that accrual of a cause of action for the violation of a Section 303 action occurs *when the damage occurs*, in conformity with West Virginia's rule[6] and consonant with *Int. Union, UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696,[7]

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[6]See Petition for Certiorari, pp. 11, 15-16.

[7]See Petition for Certiorari, pp. 14, 16, 19.

CONCLUSION

For the reasons assigned in its Petition for Certiorari and herein, UMW prays that the Writ be granted and issued to review the judgment, order and opinions of the Fourth Circuit entered in Case No. 12,723. Petitioner intends to urge each of the points and questions presented, though not argued herein.

Respectfully submitted,

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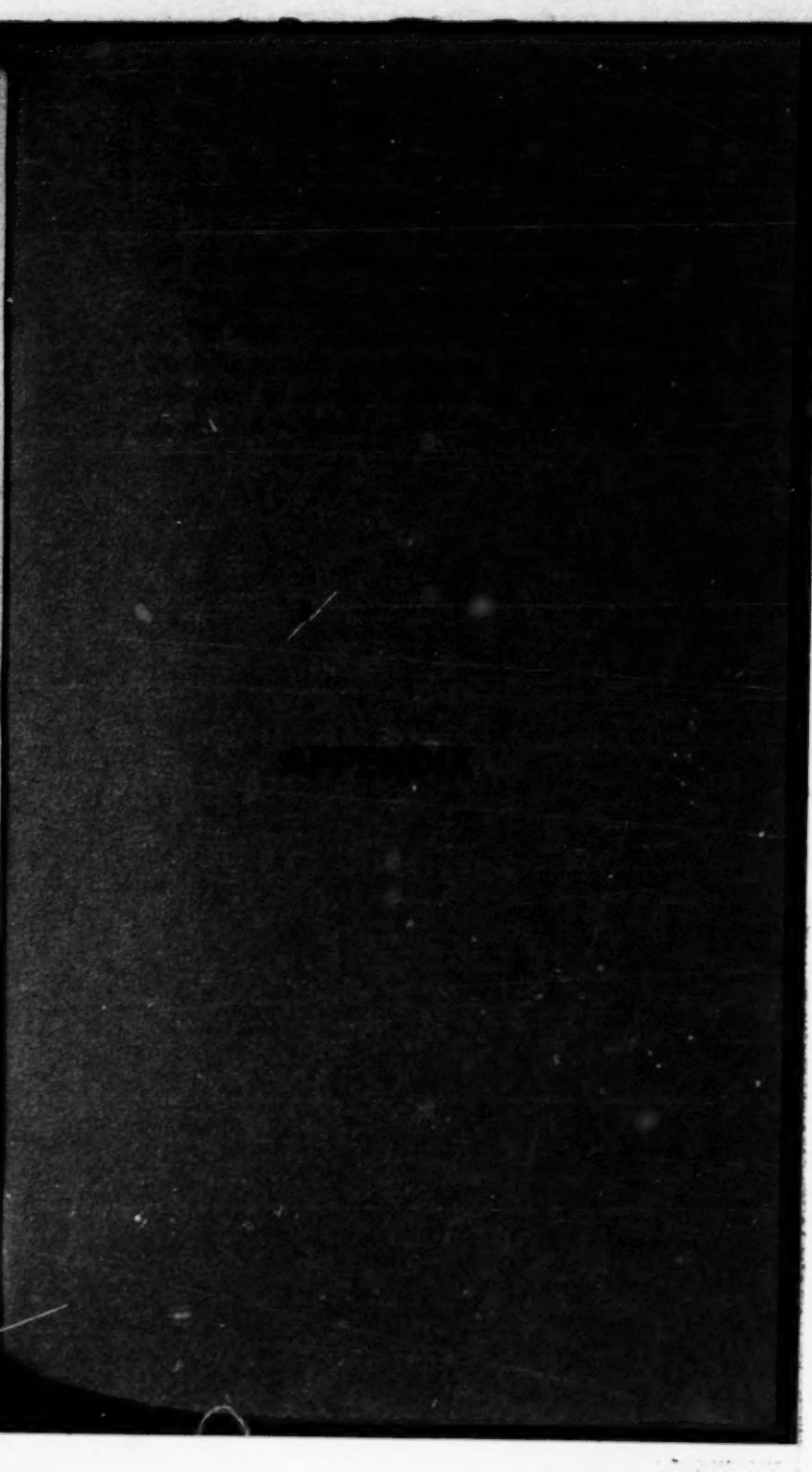

APPENDIX

Rule 15, Federal Rules of Civil Procedure

". . . (c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. . . ."